

# SECTION H

## SPECIAL CONTRACT REQUIREMENTS

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## PART I - THE SCHEDULE

### SECTION H - SPECIAL CONTRACT REQUIREMENTS

#### H-1. CORPORATE HOME OFFICE EXPENSES

No corporate home office expense of the Contractor shall be allowable under this Contract without the prior approval of the Contracting Officer. However, work performed at the Contractor's own facilities in support of this Contract, when authorized by the Contracting Officer, may be allowed to bear the allocable portion of allowable corporate G&A expense.

#### H-2. COSTS ASSOCIATED WITH WHISTLE-BLOWER ACTION

##### (a) DEFINITIONS.

##### (1) Adverse determination means:

- (i) A judgment of liability against the Contractor and in favor of the employee in an employee action in a judicial forum;
- (ii) A recommended decision, under 29 CFR Part 24.6(b), by an Administrative Law Judge that the Contractor has violated the employee provisions of the statutes or executive orders for which the Secretary of Labor has been assigned enforcement responsibility;
- (iii) An initial agency decision, under 10 CFR 708.10, that the Contractor has engaged in conduct prohibited by 10 CFR 708.5; and
- (iv) Any decision against the Contractor by the head of an executive agency under §6006 of the Federal Acquisition Streamlining Act, Pub. L. 103-355 (adding section 315 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 241 [251], et. seq.), see paragraph (c));

##### (2) Retaliatory or Discriminatory Act is the discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation, or other similar negative action taken against an employee by a Contractor after the effective date of this Contract if that negative action was undertaken as a result of the employee's protected activities as set out in 29CFR21.1(a). This term also defines those negative actions taken against an employee as a result of actions taken by the employee under protection of 10CFR708.5(a).

##### (3) Employee Action means an action filed in Federal or state court for redress of retaliatory or discriminatory action by a Contractor, any administrative procedure brought by an employee or federal agency under 29 CFR Part 24, or 10 CFR Part 708, as appropriate, or any other complaint filed against the Contractor for Retaliatory or Discriminatory Acts under 10 CFR Part 708 by an employee of any other Contractor or subcontractor which is cognizable under 10 CFR 708.

##### (4) Litigation costs include legal services, whether performed by in-house or outside counsel, administrative, technical and clerical services, costs of services of consultants and experts



retained by the Contractor to assist it, but exclude the costs of settlements and judgements.

- (b) Subsequent to an adverse determination, all litigation costs incurred in the investigation and/or defense of an employee action under this clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. Subsequent to an adverse determination, such costs, as well as costs associated with any interim relief which may be granted, may not be paid from the advance funding provided pursuant to this Contract, whether that funding be in the form of a special bank account or a payments-cleared financing arrangement. Notwithstanding the foregoing, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs incurred subsequent to an adverse determination, as well as any interim relief cost, plus interest, unless there is a final determination that the Contractor is not liable for any retaliatory or discriminatory acts. The allowance of such costs, notwithstanding any other provision of the Contract, will be determined in accordance with this clause.
- (c) Litigation costs and settlement costs incurred in connection with the defense of, or a settlement of, an employee action are allowable if incurred by the Contractor before any adverse determination of the employee's claim, if approved as just and reasonable by the Contracting Officer and otherwise allowable under the Contract. Costs incurred in pursuit of mediation or other form of alternative dispute resolution are allowable if incurred by the Contractor before any adverse determination of the employee's claim, if approved as just and reasonable by the Contracting Officer and otherwise allowable under the Contract. Additionally, the Contracting Officer may, in appropriate circumstances, reimburse the Contractor for litigation costs and costs of judgments and/or settlements which, in the aggregate, do not exceed up to the amount of the prior settlement offer approved by the Contracting Officer and rejected by the employee.
- (d) Except as provided in (c) above and (e) and (f) below, any other costs associated with an employee action, including litigation costs connected with a judgment resulting from or settlement subsequent to, an employee action, are not allowable unless the Contractor receives a judgment or final determination favorable to the Contractor. In such event, reasonable litigation costs incurred by the Contractor are allowable and the Contractor may submit a request for reimbursement for all such costs incurred subsequent to the adverse determination.
- (e) Costs incurred by the Contractor shall be allowable if they are incurred as a result of an employee action for retaliatory or discriminatory acts that resulted from compliance with either:
  - (1) Specific terms and conditions of the Contract; or
  - (2) Written instructions from the Contracting Officer.
- (f) Reasonable litigation costs and settlement costs incurred by, and judgments entered by the Office of Hearings and Appeals against the Contractor as a result of an employee action for discrimination under 10 CFR Part 708, are allowable where the Office of Contractor Employee Protection has issued a Report of Investigation, including a proposed disposition, denying the relief being sought by the employee and the employee requests a hearing by the Office of Hearings and Appeals.
- (g) The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under Section 2 of the Major Fraud Act of 1988.

### H-3. SEPARATE BUSINESS UNIT

The work performed by the Contractor under this Contract shall be conducted by a separate business unit (division, segment, etc.) from its parent company(s). The separate, autonomous, business unit shall be set up solely to perform this Contract and shall be totally responsible for all Contract activities.

#### H-4. GUARANTEE OF PERFORMANCE

Since the Contractor is a separate business unit from its parent company(s), the Contractor's parent company(s) shall guarantee performance as evidenced by the Performance Guarantee Agreement completed by the Contractor as part of Section J, Attachment 10. If the Contractor is a joint venture or other similar entity where more than one company is involved, the parent company(s) shall assume joint and severable liability for the performance of the Contractor.

#### H-5. RESPONSIBLE CORPORATE OFFICIAL

Notwithstanding the provisions of the clause entitled "Guarantee of Performance" in H-4, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: \_\_\_\_\_  
(Offeror complete)

Position: \_\_\_\_\_

Company: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### H-6. PERMITS, LICENSES, APPLICATIONS

- (a) The Contractor shall identify and abide by all permits, licenses, and other regulatory approvals necessary to perform the mission at NREL in compliance with applicable federal, state, and local environment, safety, and health regulations. The Contractor shall prepare all applications, reports, or other deliverables required by such regulatory approvals for submittal to the Contracting Officer.
- (b) If deemed appropriate by the Contracting Officer, the Contractor shall:
  - (1) Submit, in its own name all applications for regulatory approvals directly to the regulator;
  - (2) Sign permits, licenses, and applications in its own name as "operator", "co-operator", or equivalent; and
  - (3) Support the Government in any activity associated with such regulatory approvals.
- (c) The Contractor shall accept assignment of and assume any permit, license, or other regulatory approvals currently held by DOE or any previous prime Contractor for NREL.
- (d) When a regulator requires that any bond, insurance, or administrative fee is required as a



condition for such regulatory approval and the cost for such bonds, insurance, or administrative fee is determined reasonable and appropriate by the Contracting Officer, such costs are allowable under the Contract.

**H-7. CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES**

- (a) The Contractor shall immediately notify the Contracting Officer of any notice the Contractor may receive including Notice of Violations (NOV) or Notice of Alleged Violations (NOAV) issued by federal, state, or local regulators associated with the operation of NREL and/or performance of work under the Contract.
- (b) When deemed appropriate by the Contracting Officer, the Contractor shall conduct negotiations with regulators regarding NOV/NOAVs, fines and penalties, including, if the Contracting Officer so requires, accepting NOV/NOAVs in its own name. The Contractor shall make no commitments or offers to regulators binding the Government unless approved in advance and in writing by the Contracting Officer. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.
- (c) The Contractor shall support and provide assistance to the Government concerning any matter arising under a NOV/NOAV.

**H-8. FEE AND PERFORMANCE**

The initial six months will be divided into a 45 day transition period (Contract award through 45 days thereafter) and a 135 day (46 days after Contract award through 180 days after Contract award) period during which an award fee plan will be established and put in place for subsequent periods. Both of these periods shall be performed by the Contractor on a Cost-Plus-Fixed-Fee basis. After the initial six months of the Contract, Contractor performance will be assessed by the DOE twice annually against DOE established performance expectations under a Cost-Plus-Award-Fee arrangement. The Contractor shall prepare a self-assessment in accordance with the clause at DEAR 970.5204-74, Basis Fee and Award Fee (APR 1994), contained in Section I of this contract, and submit such to DOE after the end of each assessment period. Fee earned will be established by the Contracting Officer in consultation with the Fee Determining Official.

- (a) Fee and Performance for FY 1999
  - (1) Contract start through March 31, 1999. A prorated fixed-fee shall be paid to the Contractor for the accomplishment of Contract performance objectives in accordance with the provisions of this clause and the clause entitled "Payments and Advances" in Section I. These fees are intended to maximize Contractor performance in accomplishment of the Statement of Work and other areas of Contract requirements as determined by the Contracting Officer.
  - (2) April 1, 1999, through September 30, 1999. An award-fee mechanism will be used to assess Contractor performance and to establish fee to be paid. DOE will establish areas for evaluation of the Contractor.
- (b) Fee and Performance for Balance of Contract.
  - (1) An award-fee mechanism will be used to assess Contractor performance and to establish fee to be paid.

- (2) If deemed appropriate by the Contracting Officer, in consultation with the Fee Determining Official, the fee mechanism may be modified to include award fee, incentive fee, etc., or any combination thereof, when it is determined to be in the best interest of the Government. The Contractor may propose incentive arrangements to DOE for consideration. Modifications to the standard award fee mechanism must be established at the start of a fiscal year.
  - (3) Except for the initial award fee period which is a stand alone six month period, DOE will assess Contractor performance in two six month periods during annual (12 month) fee cycles. Unearned fee may be carried over within a single fiscal year, or other two-period fee cycles, as determined by DOE to be appropriate. However, the Contractor shall not be entitled to earn any carried over fee if its performance in the second fee period does not reflect an improvement over the first evaluation period. Evaluations in the second period which is the same as or equal to the first period evaluations shall not be considered improvements and no carried over fee shall be awarded. Unearned fees under one annual fee cycle shall not be carried over to the next annual fee cycle.
- (c) Cost Proposals and Fee Base Negotiation.
- (1) In preparation for annual fee base negotiation, and in order to establish acceptable direct and indirect rates, the Contractor shall submit a cost proposal to DOE addressing all costs for the 12-month period beginning on October 1 and ending September 30 (the Federal fiscal year). This cost proposal shall be submitted to the Contracting Officer on or before July 31 of each year (for example, the cost proposal for fiscal year 2000 (October 1, 1999 - September 30, 2000) is due on or before July 31, 1999). The available fee base will be negotiated and agreed to by the beginning of each fiscal year.
  - (2) The first cost proposal is due to the Contracting Officer on or before January 31, 1999 and will cover the period from April 1, 1999, through September 30, 1999. The available fee pool will be negotiated and agreed to by April 30, 1999. Thereafter, cost proposals and fee negotiations will occur in accordance with paragraph (c)(1) above.
- (d) Fee Pool Calculation and Negotiation.
- (1) Available fee for each fiscal year period under the Contract shall be established in accordance with the Notice of Proposed Rule Making published in the Federal Register, Vol. 63, No. 69, page 17,800 on April 10, 1998. When the Final Rule is published, fee calculation for the contract shall be subject to the terms of the final rule.
  - (2) After calculating the available fee in accordance with the aforementioned steps, the fee discount factor shall be applied to determine the available fee.
  - (3) There will be no base fee under this contract.
- (e) At the end of any award fee cycle, unearned award fee may, at the discretion of the Contracting Officer, be utilized for reimbursement of allowable costs.

#### H-9. CONDITIONAL PAYMENT OF FEE OR INCENTIVES (AL 97-08 (DEC 1997))

In order for the Contractor to receive all otherwise earned fee, profit, or share of cost savings under the Contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations Office Manager or his/her designee may reduce the evaluation period's otherwise earned fee, profit or share



of cost savings as described in paragraphs (a) through (d) of this clause. Any determination under this clause is not subject to the Disputes clause of this Contract. This clause does not apply to any Base Fee included in the Contract.

- (a) Minimum Requirements for Environment, Safety & Health (ES&H) Program. The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System across the appropriate Environment, Safety, and Health functional areas in accordance with the provisions of the clause entitled, "Integration of Environment, Safety and Health into Work Planning Execution," if included in the Contract, or as otherwise agreed to with the Contracting Officer. The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations Office Manager or his/her designee, at his/her sole discretion, may reduce any otherwise earned fees, profit or share of cost savings, for the evaluation period by an amount up to the amount earned.
- (b) Minimum Requirements for Catastrophic Event. If, in the performance of this Contract, there is a catastrophic event (such as a fatality, hazardous material exposure exceeding regulatory limits, loss of control over classified or special nuclear material, or an event that causes significant damage to the environment), the DOE Operations Office Manager, or his/her designee, may reduce any otherwise earned fee for the evaluation period by an amount up to the fees earned. In determining any diminution of fee resulting from a catastrophic event, the DOE Operations Office Manager or his/her designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the Contractor or other sources. This clause is in addition to any other remedies available to the Government that may be contained in this Contract.
- (c) Minimum Requirements for Specified Level of Performance.
  - (1) At a minimum the Contractor must perform the following at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document:
    - (i) the requirements specifically incentivized;
    - (ii) all of the performance requirements directly related to the incentivized requirements to a degree that the overall performance of such is at an acceptable level; and
    - (iii) all other requirements to a degree that the total performance of the Contract is not jeopardized.
  - (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Contracting Officer. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the evaluation period, the DOE Operations Office Manager or his/her designee, may reduce any otherwise earned fee, profit, or share of cost savings for the evaluation period, by an amount up to the amount earned.
- (d) Minimum Requirements for Cost Performance.
  - (1) Requirements incentivized by other than cost incentives must be performed within their specified cost and must not adversely impact the costs of performing unrelated activities.
  - (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.



- (3) The Contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the Contracting Officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations Office Manager, or his/her designee, at his/her sole discretion, may reduce in whole or in part any otherwise earned fee, profit, or share of cost savings for the evaluation period by an amount up to the amount earned.

#### **H-10. REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR**

The Representations, Certifications, and Other Statements of the Offeror, dated [ ], for this Contract are hereby incorporated, by reference, and made a part of this Contract.

#### **H-11. LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS**

- (a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the Section I clauses of this Contract entitled "Cost Accounting Standards" and "Administration of Cost Accounting Standards" if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.
- (b) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the Section I clauses entitled "Cost Accounting Standards" and "Administration of Cost Accounting Standards" if: (1) the Contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and (2) the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

#### **H-12. WORK FORCE TRANSITION AND MANAGEMENT.**

The Contractor shall adhere to the following requirements in its human resources related actions and fully cooperate with other contractors, as necessary, in order to meet the following objectives: achieve an orderly transition; be fair to incumbent employees while maintaining a productive and flexible work force; and minimize the cost of transition and impacts to DOE programs.

- (a) Corporate Transition.
  - (1) For purposes of the work force transition provisions in this clause, the term "incumbent Contractor" is the NREL division of Midwest Research Institute (MRI). However, the provisions do not apply only to the MRI NREL Director or Associate Directors employed by MRI on September 30, 1998. Also, the provisions of clause H-11 do not apply to subcontractors performing Davis-Bacon covered construction services.
  - (2) At the time the Contractor becomes responsible for the work, all incumbent Contractor employees, other than those identified in (1) above, will become employees of the Contractor.
  - (3) It is the Contractor's prerogative to establish its own management structure and team with due consideration given to minimizing the layering of management and relocation of managers to this Contract from its other operations. Although there is no requirement to hire displaced management personnel from the prior Contractor for key positions, appropriate consideration of qualified individuals from that group for positions that fit into the new management structure is encouraged.



- (4) The requirements of this section do not preclude the Contractor from conducting staff changes, as appropriate, during the transition to meet the post-transition staffing needs of its own organization and subcontractors in accordance with its approved Transition Plan.
- (b) Pay and Benefits. In order to minimize unnecessary disruption to the existing work force and to minimize severance costs, incumbent Contractor employees who transition to the Contractor will retain substantially equivalent base pay and employee benefits, including company service credit and retirement benefits, as well as companion retiree medical benefits.
- (c) Severance Pay. No severance pay is warranted on the date incumbent employees transition to the Contractor since the transition occurs under substantially equivalent employment conditions. These employees will retain their severance pay benefit earned with MRI for assistance should they ever be involuntarily (except for cause) separated. Severance pay based on the length of service with MRI plus severance pay based on service with the Contractor will be paid if an individual is subsequently involuntarily terminated (except for cause) by the Contractor. Prorated repayment of severance pay will be required should an individual be subsequently employed under substantially equivalent pay and benefits based upon the length of time between separation and new hire date.
- (d) Employee Relations. The Contractor is expected to maintain a positive employee relations environment that will foster high productivity at reasonable cost. The Contractor shall implement effective employee concerns resolution programs.

#### **H-13. WORK AUTHORIZATION SYSTEM**

- (a) Prior to the start of each fiscal year, the Contractor shall develop annual plans and baselines (see the Statement of Work). The Contractor's proposed plans and baselines will provide detailed scope, estimated cost, and schedule for each program implementation activity.
- (b) Utilizing the annual plans and baselines process, the Contractor and DOE shall mutually establish scope, schedule of performance, and total estimated cost (reference the clause H-8 entitled "Fee and Performance"). Annual negotiation of the estimated cost and fee is subject to the clause entitled "Price Reduction for Defective Cost or Pricing Data" in Section I. If agreement cannot be reached on the scope, schedule, and estimated cost, DOE shall issue a unilateral determination of the annual baseline which shall not be subject to appeal under the "DISPUTES" clause of the Contract.
- (c) No activities shall be authorized and no costs incurred until the Contracting Officer has issued direction concerning continuation of activities.
- (d) DOE may, at any time and without notice, issue direction requiring additional work, delete previously authorized work, or change the annual baselines. The Contractor, in accordance with an established change control process, shall submit proposals to adjust the estimated cost or schedule of work established in the annual plans and baselines.
- (e) Notwithstanding the other provisions of this clause, the Contractor has, in the event of an emergency, authority to take corrective actions necessary to operate in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraph (a) and (b) of the this clause.

#### **H-14. COST RECOVERY**

If, at any time during the performance of the Contract, the Contracting Officer disallows a cost(s) in



accordance with FAR 42.8, the Contractor must repay the amount owed within 15 days of the Contracting Officer's final written determination disallowing the cost(s) (In accordance with the clause at FAR 52.242-1, this determination will occur approximately 120 days after initial notice to the contractor of disallowance.) If the Contractor fails to repay the disallowed amount within the allotted time, the Contracting Officer may offset fee payments to recover the amount owed.

**H-15. LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1998) (AL 97-10)**

The Contractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislative or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**H-16. LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT, 1998) (AL 97-10)**

The Contractor or awardee agrees that none of the funds obligated on this award shall be made available for any activity, including the publication or distribution of literature, that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**H-17. INFRASTRUCTURE DEVELOPMENT**

To ensure NREL's long-term viability as a world-class facility which provides the best-value to the DOE, the Contractor shall, in cooperation with DOE, perform an assessment of long-term space requirements and shall develop options to address these needs. NREL-related operations currently occupy 622,000 gross square feet of space--of which 295,000 gross square feet is leased. Approximately 650 personnel are housed in four separate, leased buildings; this accounts for approximately 250,000 of the 295,000 feet of leased space. If it is determined by DOE that consolidation of these employees to the Government's South Table Mountain site is in the best interest of the Government, the Contractor shall enter into good-faith negotiations with DOE to structure a lease-purchase arrangement to provide for the private-financing, design, construction, and thereafter operation, of one or more new buildings on Government land to meet this need. This assessment shall take into account: the Government's desire that its lease payments will not exceed those of the status quo lease alternative; lease payments will be sufficient to amortize the project within the first 10-years of occupancy; and title to buildings will revert to the Government following expiration of the amortization period. This assessment shall be completed no later than 180-days following Contract award.

**H-18. PATENT INDEMNITY SUBCONTRACTS (SPECIAL)**

Except as otherwise authorized by the Contracting Officer, Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs for infringement of U.S. Letters Patent (except Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government), from Contractor's subcontractors for any Contract work subcontracted on the terms and in accordance with the DOE Procurement Regulations.

**H-19. EXECUTIVE COMPENSATION**

The Contractor is subject to the limitations set forth in Section 808 of Public Law 105-85, Defense Authorization Act for Fiscal Year 1998, which provides that executive compensation which exceeds the benchmark compensation amount established each fiscal year by the Office of Federal Procurement Policy is unallowable. This cost limitation is in addition to the cost principle provisions set forth elsewhere in this Contract.



For costs incurred after January 1, 1998, compensation of a senior executive which is in excess of \$340,650 is unallowable. This amount is subject to annual adjustments as established by the Office of Federal Procurement Policy. Allowable costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205-6(p).

Compensation means the total amount of wages, salary, bonuses and deferred compensation (see FAR 31.205-6(k)), and employer contributions to defined contribution pension plans (see FAR 31.205-6(j)(5) and (j)(8)) for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the Contractor's cost accounting records for the fiscal year.

Senior executive means: (1) The Contractor's Chief Executive Officer (CEO) or any individual acting in a similar capacity; (2) The Contractor's four most highly compensated employees in management positions other than the chief executive officer; and (3) If the Contractor has intermediate home offices or segments that report directly to the Contractor's corporate headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

#### **H-20. FINANCIAL MANAGEMENT SYSTEM**

The Contractor shall maintain and administer a financial management system that includes the currently existing integrated accounting system and (1) is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this contract, expenditures, costs, and encumbrances; (2) permits the preparation of accounts and accurate, reliable financial and statistical reports; and (3) assures that accountability for the assets can be maintained. The Contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the Contracting Officer, shall submit any such deviation to DOE for written approval before implementation.

#### **H-21. INTEGRATED ACCOUNTING**

Integrated accounting procedures are required for use under this contract. The Contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the Contracting Officer pursuant to the Laws, Regulations, and DOE Directives clause of this contract.

#### **H-22. LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS**

- (a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.
- (b) The Contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if: (1) the Contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and (2) the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.



## **H-23. WORK FOR OTHERS FUNDING AUTHORIZATIONS**

Any uncollectible receivables resulting from the Contractor utilizing Contractor corporate funding for reimbursable work shall be the responsibility of the Contractor, and the United States Government shall have no liability to the Contractor therefor. The Contractor is permitted to provide advance payment utilizing Contractor corporate funds for reimbursable work to be performed by the Contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, Regulations, and DOE Directives clause of this contract and such advance cannot be obtained. The contractor is also permitted to provide advance payment utilizing Contractor corporate funds to continue reimbursable work to be performed by the Contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, Regulations, and DOE Directives clause of this contract have elapsed. The Contractor's utilization of Contractor corporate funds does not relieve the contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

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# SECTION I

## CONTRACT CLAUSES

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## PART II - CONTRACT CLAUSES

### SECTION I - CONTRACT CLAUSES

#### I-1. FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<http://farsite.hill.af.mil>

#### I-2. THE FOLLOWING FEDERAL ACQUISITION REGULATION (FAR) CLAUSES ARE INCORPORATED BY REFERENCE:

52.203-3	GRATUITIES (APR 1984)
52.203-5	COVENANT AGAINST CONTINGENT FEES (APR 1984)
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
52.203-7	ANTI-KICKBACK PROCEDURES (JUL 1995)
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)
52.204-4	PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)
52.215-2	AUDIT AND RECORDS--NEGOTIATION (AUG 1996)
52.215-8	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)
52.215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)
52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
52.215-12	SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)
52.215-13	SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
52.216-10	INCENTIVE FEE (MAR 1997)
52.217-2	CANCELLATION UNDER MULTIYEAR CONTRACTS (OCT 1997)
52.219-8	UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS (OCT 1995)
52.219-9	SMALL BUSINESS, SMALL DISADVANTAGED AND WOMEN-OWNED BUSINESS SUBCONTRACTING PLAN (AUG 1996)
52.219-16	LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (OCT 1995)
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
52.222-3	CONVICT LABOR (AUG 1996)
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 1995)
52.222-6	DAVIS-BACON ACT (FEB 1995)
52.222-20	WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)
52.222-26	EQUAL OPPORTUNITY (APR 1984)
52.222-28	EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984)



52.222-29 NOTIFICATION OF VISA DENIAL (APR 1984)  
 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF  
 THE VIETNAM ERA (APR 1998)  
 52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)  
 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF  
 THE VIETNAM ERA (APR 1998)  
 52.223-2 CLEAN AIR AND WATER (APR 1984)  
 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY  
 DATA (JAN 1997) ALTERNATE I (JULY 1995)  
 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR  
 1998)  
 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)  
 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)  
 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)  
 52.224-2 PRIVACY ACT (APR 1984)  
 52.225-3 BUY AMERICAN ACT--SUPPLIES. (JAN 1994), 970.5203-3 Buy American Act  
 Substitute "use" for "deliver" in paragraph (b)  
 52.225-10 DUTY-FREE ENTRY (APR 1984)  
 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (OCT 1996)  
 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED  
 ECONOMIC ENTERPRISES (SEP 1996)  
 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995) ALTERNATE I (APR 1984)  
 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT  
 INFRINGEMENT (AUG 1996)  
 52.227-6 ROYALTY INFORMATION (APR 1984)  
 52.227-9 REFUND OF ROYALTIES (APR 1984)  
 52.230-2 COST ACCOUNTING STANDARDS (APR 1996)  
 52.230-5 COST ACCOUNTING STANDARDS--EDUCATIONAL INSTITUTION (APR  
 1996)  
 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)  
 52.232-17 INTEREST (JUN 1996)  
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 52.233-1 DISPUTES (OCT 1995) -- ALTERNATE I (DEC 1991)  
 52.233-3 PROTEST AFTER AWARD (AUG 1996) -- ALTERNATE I (JUN 1985)  
 52.237-2 PROTECTION OF BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)  
 52.237-3 CONTINUITY OF SERVICES (JAN 1991)  
 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)  
 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)  
 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (OCT 1995)  
 52.242-13 BANKRUPTCY (JUL 1995)  
 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)  
 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)  
 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL  
 VESSELS (AUG 1996)  
 52.247-67 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE  
 GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997)  
 52.249-14 EXCUSABLE DELAYS (APR 1984)  
 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)  
 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

I-3. 52.202-1 DEFINITIONS (OCT 1995) and 952.202-1

- (a) *"Head of Agency"*, means The Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) *Commercial Component*, means, any component that is a commercial item.
- (c) *Commercial*, item means
  - (1) Any item, other than real property, that is of a type customarily used for non-governmental purposes and that,
    - (i) Has been sold, leased, or licensed to the general public; or
    - (ii) Has been offered for sale, lease, or license to the general public;
  - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
  - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for,
    - (i) Modifications of a type customarily available in the commercial marketplace; or
    - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.
  - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public.
  - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services.
    - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions, and
    - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public.
  - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under